

REMARKS/ARGUMENTS

Upon entry of this Response, Claims 1-7 remain pending in the present application. Applicant happily notes the presence of allowable subject matter.

In the August 24, 2005 Office Action, Claim 1 was either objected to or rejected under 35 U.S.C. §112, and Applicant is unsure which since both are cited under extremely confusing circumstances. Claims 3 and 5 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Application Publication #2002/0016154 A1 to Huttunen (hereinafter referred to as “Huttunen.”). Claim 6 stands rejected under 35 U.S.C. §103(a) over Huttunen in view of U.S. Patent No. 6,011,813 to Eicher (hereinafter “Eicher”). Claim 7 stands rejected under 35 U.S.C. §103(a) over Huttunen in view of Eicher and further in view of U.S. Patent No. 6,069,917 to Werner (hereinafter “Werner”). Claim 4 was objected to as being allowable if rewritten in independent form. Applicant respectfully requests reconsideration of the claims in view of the above amendments and the comments below.

Claim 1

In the April 14, 2005 Office Action, the status of Claim 1 is uncertain. On page 2 of the Action, the Examiner writes that “Claim 1 is objected to” since the Examiner wished to have the statement “one of” in line 7 deleted.

On page 4, the Examiner writes “Claim 1 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. §112, 2nd paragraph. A search of

the Office Action found no such rejection, only the objection. Applicant is highly confused as to the status of Claim 1.

In response, Applicant feels that the terminology is proper, and the objection/rejection improper. The clause relates “shifting one of the measurement signal and the phase signal[.]” The clause is intended to relate that only one of the items is shifted. Removing the term “one of” says to shift both signals, which is not what is intended.

Additionally, it is noted that the Examiner has for some time, requested this change, as evidenced by the Office Action mailed May 20, 2004. Applicant fully responded to that request at that time, and Applicant is perplexed as to why the Examiner never countered the response of September 20, 2004. In that response, the Applicant responded in full to this same objection/rejection, and somehow it has resurfaced from that point with nary a hint as to any of the Examiner’s reasoning behind it.

The use of the modifier “one of” in this case is proper and conveys the intended relevant action. Accordingly, Applicant respectfully either: a) traverses the rejection of Claim 1 under 35 U.S.C. §112, 2nd paragraph; or b) requests that the Examiner withdraw the objection, dependent on which “one of” the statements is correct. This is urged since the usage is entirely proper and conveys the proper action.

Rejections under 35 U.S.C. §102

Claims 3 and 5 were rejected under §102(e) as allegedly anticipated by Huttunen. Applicant disagrees for the following reasons.

A. Standard

The standard for a proper rejection under 35 U.S.C. §102 is that “the reference must teach every element of the claim.” (M.P.E.P. 2131) Additionally, “a claim is anticipated only if each and every element as set forth in the claim is found ...in a single prior art reference.” (Emphasis Added) (Id., see also *Verdegaal Bros. v. Union Oil of California*, 914 F.2d 628, 631 (Fed. Cir. 1987)). Accordingly, if the cited art does not contain “each and every element as set forth in the claim”, then a proper case of anticipation has not been made and the rejection is improper.

B. Claim 3

Claim 3 recites a transmitter having “a data modulator ... producing modulated signal components including a magnitude component and a periodic signal containing a phase component” and an amplifier responsive to the magnitude component and the periodic phase signal[.]”

In the Office Action, the Examiner has identified item 7 of Fig. 1 as the “data modulator ... producing modulated signal components including a magnitude component and a periodic signal containing a phase component[.]” A closer reading of Huttunen shows that the modulator 7 “combines two independent signals in the transmitter ... to transmit them on the same transmission band.” (Huttunen, Page 2, para. 17.) Further, Huttunen says that in “the ... modulator 7, the signals are ... combined.” (Id.) A straight reading of the appropriate portions of Huttunen shows that the modulator there does not “produce ... components”, but instead “combines” them. Accordingly,

this Huttunen does not show or even imply a modulator “produc[ing] ... components”, let alone “a magnitude component and a periodic signal containing a pahse component[.]”

Further, the Examiner states that “amplifier 8 [is] responsive to the magnitude component and the periodic signal for producing a desired communication signal[.]” Applicant again directs the Examiner to the relavant portion of Huttunen that states that the “I/Q modulated signal is forwaeded to the PA 8 ... for transmission[.]” (Id.) Thus, the amplifier in Huttunen is not “responsive to the magnitude component and the periodic signal”, like that claimed in Claim 3. The Huttunen amplifier is geared only to operate with the final output signal as opposed to any components.

Accordingly, for the reasons stated above, among others, Applicant respectfully traverses the rejection of Claim 3 under §102(e) as allegedly anticipated by Huttunen. Applicant respectfully requests that the Examiner withdraw this rejection.

C. Claim 5

Claim 5 depends from Claim 3. Since the rejection of Claim 3 is not cirrrectly predicated upon Huttunen, Claim 5 is also allowable for those same reasons as recited above in relation to Claim 5, among others.

Rejections under 35 U.S.C. §103

Claim 6 stands rejected under 35 U.S.C. §103(a) over Huttunen in view of U.S. Eicher. Claim 7 stands rejected under 35 U.S.C. §103(a) over Huttunen in view of Eicher and further in view of Werner.

A. Standard

To establish and maintain a *prima facie* case of obviousness, the argument in the Office Action requires:

- i. “some suggestion or motivation ... to combine”;
- ii. “a reasonable likelihood of success”; and
- iii. “the prior art reference (or references when combined) must teach or suggest all the claim limitations.” (Emphasis added)

(M.P.E.P. 2143, *In re Vaeck*, 947 F.2d 488, USPQ2d 1438 (Fed. Cir. 1991)).

Accordingly, when a rejection cannot show these items *in toto*, the rejection must be withdrawn.

B. Claim 6

Claim 6 stands rejected under 35 U.S.C. §103(a) over Huttunen in view of Eicher. Claim 6 depends from Claim 3. Accordingly, Claim 6 suffers the same shortcomings as those mentioned above with respect to Claim 3. Eicher neither teaches the shortcomings noted in Huttunen, nor suggests them. Thus, for the reasons stated above in relation to Claim 3, the rejection of Claim 6 under 35 U.S.C. §103(a) over Huttunen in view of Eicher is respectfully traversed. Accordingly, Applicant requests that the Examiner withdraw this rejection.

C. Claim 7

Claim 7 stands rejected under 35 U.S.C. §103(a) over Huttunen in view of Eicher and further in view of Werner. Claim 6 is depends from Claim 3. Accordingly, Claim 6 suffers the same shortcomings as those mentioned above with respect to Claim 3. Eicher neither teaches the shortcomings noted with the rejection based on Huttunen, nor suggests them. Further, the addition of Werner does not cure the shortcomings. Thus, for the reasons stated above in relation to Claim 3, the rejection of Claim 7 under 35 U.S.C. §103(a) over Huttunen in view of U.S. Eicher and further in view of Werner is respectfully traversed. Accordingly, Applicant requests that the Examiner withdraw this rejection.

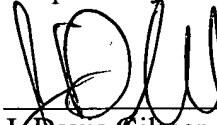
CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 408-579-9216.

Dated: October 4th, 2005

Respectfully submitted,



J. Davis Gilmer
Reg. No. 44,711

TROPIAN, INC.
20813 Stevens Creek Blvd.
Cupertino, CA 95014
(408) 579-9216 Telephone
(408) 865-1140 Facsimile